

## REMARKS

This communication is in response to the non-final office action mailed on June 9, 2009 in which claims 1-20 were rejected. With this response, independent claims 1 and 12 have been amended. Claims 1-20 remain pending in the application.

### **Claim Rejections under 35 U.S.C. §§ 102 and 103**

Claims 1-5, 7, and 9-20 were rejected under 35 U.S.C. § 102 as anticipated by Stevenson, US patent number 6,964,063 ("Stevenson").

The Examiner at page 2 of the office action interprets Stevenson to provide a releasable connection 20 formed of parts 14 and 22 and a flexible protection element 16, 18. The components 16, 18 that the Examiner interprets to be a flexible protection element are described by Stevenson at column 5, lines 8-32 as a left casing 16 and a right casing 18. The left and right casings 16, 18 "slidably engage" with respective portions of the left and right leg bands 10 as illustrated by Stevenson in Figure 1C. Stevenson describes at column 5, lines 28-32 that the casings 16, 18 slide to move the crotch panel 12 to the closed position.

With this response, independent claims one and 12 have been amended to require a flexible protection element fixed in place relative to the leg holes and configured to wrap around and at least partly cover the edge portion of at least one of the leg holes.

The left and right casings 16, 18 of Stevenson, which the Examiner interprets at page 2 of the office action to be flexible protection elements, slide relative to the leg holes and are not fixed in place relative to the leg holes as required by amended independent claims one and 12. Thus, claims 1-5, 7, and 9-20 cannot be anticipated by Stevenson.

It is respectfully requested that the rejections to claims 1-5, 7, and 9-20 under 35 U.S.C. § 102 over Stevenson be withdrawn.

It is believed that amended independent claims 1 and 12 are not rendered obvious over Stevenson. Stevenson requires that the left and right casings 16, 18 slide to open and close the crotch panel 12. Any analysis under §103 in an attempt to establish a *prima facie* case of obviousness over Stevenson must take into consideration the Stevenson invention as a whole; that is, one must consider the particular problem solved by the combination of elements that define the invention. *Interconnect Planning Corp. v. Feil*, 227 USPQ 543, 551 (Fed. Cir. 1985).

However, there is no suggestion or motivation to make a proposed modification if the proposed modification would render the prior art invention to be unsatisfactory for its intended purpose. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984); MPEP §2143.01 V. In particular, the left and right casings 16, 18 of Stevenson that the Examiner interprets to be a flexible protection element must slide to allow the crotch panel 12 to open and close. Modifying Stevenson to provide a flexible protection element that is fixed in place relative to the leg holes would render Stevenson unsatisfactory for the purpose of opening and closing the crotch panel 12. Consequently, none of the pending claims can be rendered obvious over Stevenson.

Claims 6 and 8 were rejected under 35 U.S.C. § 103 as unpatentable over Stevenson, US patent number 6,964,065. It is believed that patent number 6,964,065 is a typographical error since this patent number has been issued to Bamber. Thus, the following comments are directed to the rejection of claims six and eight over Stevenson US patent number 6,964,063.

Based on the above, it is believed that amended independent claims 1 and 12 recite patentable subject matter and are not rendered obvious over Stevenson. Claims 6 and 8 further define patently distinct amended independent claim 1 and are thus believed to be nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, it is respectfully requested that the rejections to claims 6 and 8 under 35 U.S.C. § 103 over Stevenson be withdrawn.

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## CONCLUSION

Applicant respectfully asserts that pending claims 1-20 are in condition for allowance and notice of the same is respectfully requested. The Examiner is respectfully urged to telephone the undersigned if issues remain outstanding. No additional fees are believed due at this time. However, the office is authorized to charge any fees actually due and credit any overpayment to deposit account 50-4439.

Respectfully submitted,  
Ehmsen

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